

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT ANDERSON,

Defendant-Appellant.

UNPUBLISHED

March 18, 2003

No. 239235

Wayne Circuit Court

LC No. 00-007891-01

Before: Griffin, P.J., and Neff and Gage, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of second-degree criminal sexual conduct, MCL 750.520c(1)(a), for which he was sentenced as an habitual offender, fourth offense, MCL 769.12, to nine to thirty years in prison. He appeals his sentence as of right and we affirm. This case is being decided without oral argument pursuant to MCR 7.214(A) and (E).

Defendant was sentenced under the statutory guidelines. MCL 777.1 *et seq.* As scored, the guidelines established a minimum sentence range of 58 to 114 months on the underlying offense. MCL 777.64. The court neglected to adjust the upper limit to account for defendant's habitual offender status as required under MCL 777.21(3). Defendant later moved for resentencing, asserting that Offense Variable 11, MCL 777.41, had been improperly scored. The court agreed that the score was incorrect and the adjusted score established a minimum sentence range of thirty-six to seventy-one months on the underlying offense. MCL 777.64. However, the court also noted that the upper limit was increased to 142 months because of defendant's habitual offender status. Because defendant's sentence was still within the guidelines, the court denied resentencing.

Sentence enhancement under the habitual offender statute is discretionary. *People v Alexander*, 234 Mich App 665, 673-674; 599 NW2d 749 (1999). Having elected to sentence defendant as an habitual offender, the court was required to determine the applicable minimum sentence range as provided by the guidelines, MCL 769.34(2), and the guidelines required that the upper limit of that range be doubled. MCL 777.21(3)(c). The fact that the trial court incorrectly calculated the appropriate sentence range when it sentenced defendant did not preclude it from correcting the error once it was brought to the court's attention. Because the minimum sentence was "within the appropriate sentence range" and defendant does not contend that there were any other scoring errors or that he was sentenced on the basis of inaccurate information, the sentence must be affirmed. MCL 769.34(10).

Defendant also argues that his nine-year minimum sentence was disproportionate in light of the overall reduction in the minimum sentence range on the underlying offense. We disagree. The principle of proportionality is inapplicable to sentences determined under the statutory guidelines unless the court has elected to depart from the guidelines. *People v Pratt*, ___ Mich App ___; ___ NW2d ___ (Docket No. 228081, issued December 17, 2002); *People v Babcock*, 250 Mich App 463, 468-469; 648 NW2d 221 (2002), lv gtd 467 Mich 872 (2002).

Affirmed.

/s/ Richard Allen Griffin

/s/ Janet T. Neff

/s/ Hilda R. Gage